

## JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION

|   |                            |
|---|----------------------------|
| I recommend that the Department of Commerce negotiate only with _____       |                            |
| _____   | (Proposed Contractor(s))   |
| for _____   |                            |
| (Description of Supplies or Service)  |                            |
| Requisition No. _____   | Cost Estimate \$ _____     |
| (Include basic contract period and all options or total systems life costs) |                            |
| Requesting Activity _____   | Contracting Activity _____ |

## CERTIFICATION REQUIREMENTS

I certify that the attached narrative justification is accurate and contains complete data necessary to support the recommendation for other than full and open competition.

The requisitioner further certifies that the attached narrative justification verifies the Government's minimum needs or schedule requirements and any rationale used to justify other than full and open competition procedures.

| Requisitioner (Name and Title) | Signature | Phone No. | Date |
|--------------------------------|-----------|-----------|------|
|                                |           |           |      |

\*The procurement request authorizing official, whose signature appears in block G of the Procurement Request (Form CD-435). Before requesting this acquisition, state the statutory authority for conducting this acquisition under "other than full and open competition" procedures in the following blank \_\_\_\_\_. (use only one statutory authority). Also provide a narrative justification to this form. In accordance with FAR Subpart 6.3, the narrative justification must include the facts necessary to reasonably and legitimately lead to the use of the specific authority for other than full and open competition; including adequate information on the nature and/or description of the action being approved and a description of the supplies or services required to meet the agency's needs.

**Note:** Use of this form is optional when: (1) the justification contains all information required by FAR 6.303-2, is certified by the requisitioner and contracting officer and is approved at the appropriate levels; or (2) simplified acquisition procedures for acquisitions not exceeding \$100,000 are used, in which case the simplified documentation practices outlined in FAR 13.106-2 may be followed.

### STATUTORY AUTHORITY

**41 USC 253(c)(1)- Only one responsible source**

The supplies or services required by the agency are available from only one responsible source and no other type of supplies or services will satisfy agency requirements.

**41 USC 253(c)(2) - Unusual & compelling urgency**

The agency's need for the supplies or services is of such an unusual and compelling urgency that the government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals. (NOTE: This authority will not be approved if it is determined that the urgency is due to a lack of advance planning by the requiring activity. Solicitation from as many potential sources as is practicable under the circumstances is required.)

**41 USC 253(c)(3) - Industrial mobilization; or engineering, developmental, or research capability; or expert services**

It is necessary to award the contract to a particular source or sources in order (a) to maintain a facility, producer, manufacturer, or other supplier available for furnishing supplies or services in case of a national emergency, or to achieve industrial mobilization, or (b) to establish or maintain an essential engineering, research, or development capability to be provided by an educational or other nonprofit institution or a federally funded research and development center or (c) to acquire the services of an expert for any current or anticipated litigation or dispute.

**41 USC 253(c)(4) - International agreement**

The terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written directions of a foreign government reimbursing the agency for the cost of the acquisition of the supplies or services for such government, have the effect of requiring the use of procedures other than competitive procedures.

**41 USC 253(c)(5)- Authorized or required by statute**

A statute expressly authorizes or requires that the acquisition be made through another agency or from a specified source, or the agency's need is for a brand-name commercial item for authorized resale.

**41 USC 253(c)(6)- National security**

The disclosure of the agency's needs would compromise the national security unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.

**41 USC 253(c)(7) - Public Interest**

The agency head (Secretary of Commerce) determines that it is not in the public interest to use full and open competition in the particular acquisition concerned, and notifies Congress in writing of such determination not less than 30 days before award of the contract.

APPROVAL REQUIREMENTS

Contracting Officer-Not exceeding \$500 000:

|                             |           |           |      |
|-----------------------------|-----------|-----------|------|
| Contracting Officer & Title | Signature | Phone No. | Date |
|                             |           |           |      |

Contracting Activity Competition Advocate-Over \$500,000 but not exceeding \$10 million:

|   |           |           |      |
|---|-----------|-----------|------|
| Contracting Activity Competition Advocate & Title | Signature | Phone No. | Date |
|   |           |           |      |

Head of Contracting Activity (HCA) or HCA Designee-Over \$10 million but not exceeding \$50 million:

|   |           |           |      |
|---|-----------|-----------|------|
| Head of Contracting Activity/HCA Designee & Title | Signature | Phone No. | Date |
|   |           |           |      |

Procurement Executive-Over \$50 million:

|  |           |           |      |
|--|-----------|-----------|------|
| Procurement Executive & Title  | Signature | Phone No. | Date |
| Kenneth J. Buck<br>Acting Director for Acquisition Management<br>and Procurement Executive |           |           |      |

NOTE: Use the total cost estimate specified on the front of this document in determining the necessary approvals. Each review must be preceded by lower level approval(s), e.g.. over \$50 million all approvals are required.



# **Justification and Approval to Procure Using Other Than Full and Open Competition**

Upon the basis of the following justification, I hereby approve, as Chairman of the Competition Advocacy Board, the issuance of the proposed contract described herein using other than full and open competition, pursuant to the authority of 41 U.S.C., 253(c)(1), as amended by Public Law 99-500.

1. Agency Identification:

Agency name: U.S. Patent and Trademark Office (PTO)  
x  
x  
x

Contracting Office: U.S. Patent & Trademark Office  
Office of Procurement  
2011 Crystal Drive, Suite 810  
Arlington, VA 22202

2. Nature of Action Being Approved:

This justification seeks approval for the purchase of

3. Description of Supplies/Services:

x

The estimated cost is \$  
for the period from  
through

4. Statutory Authority:

The Statutory authority permitting other than full and open competition is cited in 41 U.S.C. 253(c)(1), "only one responsible source." The requirement can be satisfied by only one responsible source and not other product or service will satisfy the needs of the agency.

5. Nature of the Acquisition Requiring Use of the Authority Cited:

6. Contracting Officer's Determination of Fair and Reasonable Anticipated Cost:

The Contracting Officer has determined that the anticipated cost to the Government will be fair and reasonable.

7. Market Survey:

[sample]

As the specified software maintenance is only available from the system vendor, it was determined that a market survey is not applicable in this instance

8. Statement of Actions to Remove or Overcome Barriers to Competition:

not applicable

## **TECHNICAL AND REQUIREMENTS CERTIFICATION**

I certify that the facts and representations under my cognizance which are included in this justification and its supporting request for procurement services and which form a basis for this justification are complete and accurate.

REQUIREMENTS COGNIZANCE:

|                |       |        |
|----------------|-------|--------|
| Name and Title | Phone | (date) |
|----------------|-------|--------|

CONTRACTING OFFICER CERTIFICATION (FAR 6.303-2(A)(12):

I certify that this justification, including its supporting request for procurement services, is accurate and complete to the best of my knowledge and belief.

|                |                |        |
|----------------|----------------|--------|
| Raymond Witmer | (703) 308-5064 | (date) |
|----------------|----------------|--------|

APPROVAL:

|                |       |        |
|----------------|-------|--------|
| Name and Title | Phone | (date) |
|----------------|-------|--------|